## MESSAGE FROM THE GOVERNOR.

*To the House of Representatives.*

In view of the fact that it has been passed by both houses with such unanimity, it is with extreme reluctance that I return, without my approval, Substitute House bill No. 125, entitled "An Act to authorize private corporations created or that may be created, under the General Laws of Texas, to extend or renew their corporate existence when the same has expired or may be about to expire by lapse of time, and to prescribe the conditions and mode of such extension or renewal." My objection to the measure rests upon two grounds—first, its unconstitutionality, and, second, its impolicy. One of the objects of the bill is to renew and extend the corporate existence of such corporations as have been created under the General Laws of the State and which have expired within twelve months before the passage of the act by lapse of time. Article 680, Chapter 5, Title XXI, Revised Statutes, provides that a corporation may be dissolved in two ways—one, by the expiration of the time limited in its charter, and the other, by a judgment of dissolution rendered by a court of competent jurisdiction. In either contingency, unless a receiver be appointed by a court of competent authority, the president and directors or managers of the affairs of the corporation become trustees of the creditors and stockholders of such corporation, with full power to settle the affairs, collect the outstanding debts, and divide the moneys and other property among the stockholders after paying the debts due and owing by such corporation at the time of its dissolution as far as such money and property will enable them. If the bill under consideration should become law, then three-fourths of the stockholders of any such corporation as may have become dissolved through expiration of the time limited in its charter, may, at a regular meeting and without notice of their intended action, or at a special meeting called for that purpose, by resolution, renew its corporate existence, specifying the time for which it may be renewed, not to exceed fifty years. The stock of those who disagree to such renewal and extension, may be arbitrarily purchased by those who favor such action at its current value, and when such value cannot be agreed upon, the par value of such stock shall be tendered to or safely deposited, subject to the order of the owners thereof, until such current value shall be determined by arbitration or judicial proceedings. The question that has presented itself most forcibly to my mind is as to the competency of the Legislature to enact such legislation. If it be retroactive in its operations, or interferes with vested rights, it is void. Every corporation, to which life may be restored, as contemplated by the bill, was created under statutory authority for certain purposes, for a limited period of existence, and with the assent of the stockholders. Every charter granted was not only a contract between the State and the incorporators, but also between the stockholders as well. It is true that the law, under which the corporation was created, provides that its charter or amendments thereto shall be subject to the power of the Legislature to alter, reform or amend the same, but surely such power could only be exercised during the term of its existence, and not after its expiration. Before the bill under consideration could be operative at all, the time of the charter must have terminated, and the corporation must be without president, secretary, treasurer, or directors, and without capacity to elect such officials. It must also be without authority to do a single corporate act. It must be entirely dead, and its assets, if any, must have passed into the hands of a receiver or trustees for the payment of its debts and for the distribution of what may remain to the stockholders, or its affairs may be completely administered, and no debt or asset exist to be paid or distributed. No thought is taken in the bill of the creditor. He and his rights seem to be completely ignored. Nor is the consent of all the stockholders made a prerequisite. Can it be said that neither the creditors, if any there be, nor all of the stockholders have the right to the protection of the law, in pursuance of which the charter was granted and upon which its very existence depended? Can the methods of procedure allowed them by the law for the protection and enforcement of their rights be materially and substantially changed or abolished by legislation had after the charter, under which such rights accrued, shall have expired? The bill is not an invalidating measure nor are the rights of those, who may be affected by it, of a purely remedial character. The creditors who may prefer that such procedure as existed when the indebtedness was incurred shall be continued, and the opposing stockholders may prefer to have the assets distributed rather than be returned to the corporation. Such rights in the creditors and stockholders have become vested. They are valuable and substantial rights, growing out of the charter and the law, to

which the corporation was indebted for its existence. I respectfully submit that such rights are beyond legislative interference, and especially is it so, the corporation being dead. Section 16, Bill of Rights, State Constitution, expressly forbids the enactment of a retroactive law. The doctrine of vested rights is too well settled to require discussion.

In this connection, the query is pertinent—can private property be condemned for private use in such manner as is contemplated by the bill? The corporations to be affected are private in their character, and the court, to which appeal may be had, is vested only with authority to ascertain the current value of the shares held by those stockholders, who are opposed to the renewal and continuance of the corporation. The proceedings contemplated by the measure are condemnatory in their character and are in the nature of an enforced sale. They are between individuals and have no relation whatever to the public. The fact that railway associations are invested with unusual and summary powers as to condemnatory proceedings and as to the sale of the stock belonging to defaulting members, cannot be urged as a precedent to justify the pending measure, for the reason that by the Constitution railroads are declared public highways and railroad companies common carriers. Is the procedure prescribed by the bill in harmony with Section 19, Bill of Rights, which guarantees a citizen against deprivation of property or privileges except by the due course of the law of the land? I think not.

As to the constitutional phase of the question, I beg to invite the attention of the House to the accompanying letter from the Attorney-General.

But, were these constitutional objections not in the way, I would still have great hesitancy in giving my approval to the bill. How many corporations is it proposed by this means to raise from the dead and to clothe with life and power? What is their character and for what purposes were they originally created? What franchises and privileges, if any, did they enjoy, and what the effect upon such franchises and privileges, if the pending measure should become law? The entire absence of any information upon the subject creates an apprehension in my mind that its results may be further reaching and more comprehensive than was contemplated by the Legislature when considering the bill. The general incorporation law now in force, provides a method by which new charters can be secured with as little delay and expense as their renewal and continuance can be had under the contemplated law.

JOSEPH D. SAYERS,
Governor.

ATTORNEY-GENERAL'S OFFICE.
Austin, Texas, March 4, 1899.

*To His Excellency Governor Joseph D. Sayers, Executive Office.*

DEAR SIR: I herewith return to you Substitute House bill No. 125. You ask me if this bill is constitutional?

I have given this subject extensive investigation and have considered it after an examination of and in the light of many authorities, and I respectfully submit to you, that it is my opinion that the bill is unconstitutional.

I think that feature of the bill which provides that corporations which have expired within twelve months before the passage of this act may renew or revive their corporate existence by resolution adopted by a majority vote of three-fourths of the stockholders, renders the bill unconstitutional.

When corporations are formed, the law as it existed at the time, becomes a part of the contract, and subscribers take stock and pay for it with the knowledge of the law, and upon the presumption of the stability of the law under which they entered into the corporation. It is true that the act of the Legislature, passed April 24, 1874, which is in the Revised Statutes, Article 650, the right is reserved to the Legislature to alter, reform or amend all charters, or amendments to charters, under the provisions of the general law; but, is an act which provides for the re-creation of a defunct corporation, after it must have passed by virtue of the law, into process of liquidation, an alteration, retormation or amendment of the charter.

I call your attention to Title XXI, Chapter 5, of the Revised Statutes, and especially to Article 680, which is as follows: "A corporation is dissolved (1) by the expiration of the time limited in its charter; (2) by a judgment of dissolution rendered by a court of competent jurisdiction."

The one method of dissolution is as effective as the other. In said Chapter 5 the law provides that the president and directors or managers of the affairs of the corporation at the time of its dissolution shall be trustees of the creditors and stockholders of such corporation, with full power to settle the affairs, collect the outstanding debts, *and divide the moneys and other property among the stockholders*, after paying the debts due

and owing by such corporation at the time of its dissolution. The rights of the stockholders to a division of the money and other property vests in them immediately upon the dissolution of the corporation, subject, of course, to the rights of creditors to have their debts first paid. Now, with this vested right in the stockholders, can the Legislature pass a law taking their money and property, held in trust for them by their last president and board of directors, and provide a method whereby three-fourths of the stockholders can pass *all* of the assets into the re-created corporation, over the protest of the dissenting stockholders? Such a law would, in my opinion, be retroactive and impair the obligation of a contract and violative of the Constitution, Article 1, Section 16. See also Southerland on Statutory Construction, Section 474.

This feature of the bill does not prolong the life of an existing corporation, neither does it provide for a new corporation, but it provides that a stated majority can condemn the private property of a dissenting minority, revive the franchise which was once a part and parcel of their property and renew the corporate life that expired when the property rights vested in trustees to be held in trust for distribution among the stockholders. If a portion of the money or assets of the corporation had been distributed, will it be contended that this law could recall it from the stockholders, rehabilitate the trustees and pass it into a new corporation revived over the dissent of a minority of the stockholders? I think not. Then the right of distribution, once vested, is as inviolative as the act in process of distribution.

Under the law as it exists now, upon the dissolution of a corporation, the stockholders have a peaceful right of distribution and division of the assets belonging to them, and under this proposed law, the above right is taken from them, their property is taken from them, and they are driven, if agreement on valuation cannot be had, into litigation to determine the value of their property, which they are forced to sell over their protest and against their will. See Black on Constitutional Prohibitions, Sections 78 and 79; Cooley's Constitutional Limitations, Sixth Edition, page 344.

I recognize that after a corporation has been dissolved or lost its franchise to continue its operations, it may be reorganized or revived pursuant to authority newly conferred by the statute. But, it is clear that this can be done only with the consent of all the stockholders, for although the Legislature may at any time confer franchises or privileges, it cannot arbitrarily compel any one to accept them or use them. Morawetz on Private Corporations, Vol. 2, Section 1038; Beach on Private Corporations, Vol. 1, page 79.

Where the charter of a corporation or the general law under which it is organized fixes the existence of the corporation, it will upon the expiration of the time, become *ipso facto*, dissolved, and the assets must be distributed if any one of the stockholders insists upon it. Cook on the law of stock and stockholders, Sections 636 and 638; Beach on Private Corporations, Vol. 2, Section 780. And the right of distribution upon dissolution is expressly given in the Revised Statutes, Article 682.

If it be said that the method of distribution of assets provided in our statute is merely a remedy, and does not come within the constitutional inhibition, I say it is more than a remedy, it provides an easy, safe, inexpensive and expeditious mode of repossessing his property, and on this right I quote from the opinion of Mr. Justice Clifford in the case of Edwards vs. Kearzey, 96 U. S., 608, as follows:

"I concur in the judgment in this case, upon the ground that the State law, passed subsequent to the time when the debt in question was contracted so changed the nature and extent of the remedy for enforcing the payment of same as it existed at the time as materially to impair the rights and interests which the complaining party acquired by virtue of the contract merged in the judgment.

"When an appropriate remedy exists for the enforcement of the contract at the time it was made, the State Legislature cannot deprive the party of such a remedy, nor can the Legislature append to the right such restrictions or conditions as to render its exercise ineffectual or unavailing. State Legislatures may change existing remedies and substitute others in their place; and, if the new remedy is not unreasonable, and will enable the party to enforce his rights without new and burdensome restrictions, the party is bound to pursue the new remedy, the rule being, that a State Legislature may regulate at pleasure the mode of proceeding in relation to past contracts as well as those made subsequent to the new regulation."

In the same case, Mr. Justice Swayne,

delivering the opinion of the court, says: "The obligation of a contract includes everything within its obligatory scope. Among these elements nothing is more important than the means of enforcement. This is the breath of its vital existence. Without it, the contract, as such, in the view of the law, ceases to be, and falls into the class of those 'imperfect obligations,' as they are termed, which depend for their fulfillment upon the will and conscience of those upon whom they rest. The ideas of right and remedy are inseparable. 'Want of right and want of remedy are the same thing.' These propositions seem to us too clear to require discussion. It is also the settled doctrine of this court, that the laws which subsist at the time and place of making a contract enter into and form a part of it, as if they were expressly referred to or incorporated in its terms. This rule embraces alike those which affect its vitality, construction, discharge and enforcement. Von Hoffman vs. City of Quincy, supra; McCracken vs. Hayward, 2 How., 508.

In Green vs. Biddle (8 Wheat., 1) the court said, touching the point here under consideration: "It is no answer, that the acts of Kentucky now in question are regulations of the remedy and not of the right to the lands. If these acts so change the nature and extent of existing remedies as materially to impair the rights and interests of the owners, they are just as much a violation of the compact as if they overturned his rights and interests."

I submit that the case of Loan Association vs. Hardy, 86 Texas, page 610, is in line with the opinion herein, and respectfully refer you to it.

Yours truly,

(Signed) T. S. SMITH,

Attorney-General.